

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARK A. CAMPBELL a/k/a NICOLE ROSE
CAMPBELL and STEVEN MILLER,

Plaintiffs,

v.

ORDER

Case No. 17-cv-775-jdp

SERGEANT BRUCE, ROBERT KRUEGER,
JASON ALDANA, STEVEN JOHNSON,
ROBIN DIEBOLD, PAUL KEMPER,
CATHY JESS and CINDY O'DONNELL,

Defendants.

Plaintiffs Mark A. Campbell a/k/a Nicole Rose Campbell and Steven Miller, prisoners in the custody of the Wisconsin Department of Corrections, have submitted a proposed civil action under 42 U.S.C. § 1983. Plaintiffs have filed a certified copy of their trust fund account statement in support of their motions for leave to proceed without prepaying the fee. After considering the motions and supporting documentation, the court concludes that plaintiffs qualify for indigent status.

Even when a prisoner litigant qualifies for indigent status, the litigant must pay a portion of the fee returned by the formula set forth in 28 U.S.C. § 1915(b)(1). Using information for the relevant time period from plaintiffs' trust fund account statements, I conclude plaintiff Campbell's initial partial filing fee to be \$7.74 and plaintiff Miller's initial partial filing fee to be \$5.52.

Plaintiff Miller has also submitted a motion to use her release account funds to pay the full fee for filing this case. Dkt. #4. Pursuant to 28 U.S.C. § 1915(b)(1), prison officials are required to use a prisoner's release account to satisfy an initial partial payment if no other

funds are available. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). Therefore, if sufficient funds do not exist in plaintiff's regular account to pay the initial partial payment, she should be allowed to use her release account funds to pay some or all of the assessed amount of \$5.52.

However, with the exception of initial partial payments, this court does not have the authority to tell state officials whether, and to what extent, a prisoner should be able to withdraw money from a release account. Therefore, I will deny plaintiff Miller's request to use release account funds to pay the full \$350 fee for filing this case.

ORDER

IT IS ORDERED that:

1. Plaintiff Mark Campbell a/k/a Nicole Rose Campbell is assessed \$7.74 as an initial partial payment of the \$350 fee for filing this case and Plaintiff Steven Miller is assessed \$5.52 as an initial partial payment of the \$350 fee for filing this case. Plaintiffs are to submit a check or money order made payable to the clerk of court in the amount of \$7.74 and \$5.52, respectively, or advise the court in writing why they are not able to submit the assessed amount on or before November 14, 2017.
2. Plaintiff Miller's motion to use release account funds to pay the \$5.52 initial partial filing fee is GRANTED.
3. Plaintiff Miller's motion to use release account funds to pay the full \$350 filing fee is DENIED.
4. If by November 14, 2017, plaintiff fails to pay their assessed initial partial filing fees or show cause for failure to do so, plaintiffs will be held to have withdrawn this action

voluntarily and the case will be closed without prejudice to plaintiffs filing this case at a later date.

Entered this 23rd day of October, 2017.

BY THE COURT:

/s/
PETER OPPENEER
Magistrate Judge